IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 7831 of 2006(G)

PETITIONER:

A. SHABEELA, PANAKKATTU HOUSE,
EDAPPALLYKOTTA, CHAVARA, KOLLAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

RESPONDENTS:
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1. THE STATE OF KERALA, REPRSENTED
BY THE SECRETARY TO GOSVERNMENT, GENERAL
EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM.

3. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.

4. THE DISTRICT OFFICER,
K.P.S.C. DISTRICT OFFICE, KOLLAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE MAIN RANK LIST FOR APPOINTMENT TO THE POST OF H.S.A. (NATURAL SCIENCE) PUBLISHED BY THE FOURTH RESPONDENT DATED 9-9-04**
EXT.P2	**TRUE COPY OF THE ORDER G.O.(MS)NO.120/99/G.EDN. DTD. 25-5-99**
EXT.P3	**TRUE COPY OF THE CIRCULAR (ORDER) NO.1507/ADV.C3/2005/ P& ARD DTD. 9-12-05**
EXT.	

THIRD RESPONDENT'S EXHIBITS

EXT.R3(A)	**TRUE COPY OF THE COVERING LETTER DATED 10-02-06 OF THE DEPUTY DIRECTOR OF EDUCATION.**

SECOND RESPONDENT'S EXHIBITS

EXT.R2(A)	**TRUE COPY OF THE GOVERNMENT LETTER DTD. 10-02-06**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.7831 OF 2006

Dated this the 8th day of February, 2007

JUDGMENT

Case of the petitioner in short is as follows:

Petitioner is included in the rank list published by the PSC for appointment to the post of High School Assistant(Natural Science) in the Education Department in Kollam district. Petitioner is ranked at No. 29 in Ext.P1 rank list.

2. The prayer in the writ petition is to direct the fourth respondent to sent advice memos to the candidates in Ext.P1 list based on the reporting of the vacancies by the second respondent. The question for determination is the number of vacancies.

3. Counter affidavits and reply affidavits have been filed . In the last affidavit filed on 24-08-06 it is inter-alia stated as follows:

> " As per the existing rules the percentage of post

earmarked for each category for the appointment of H.S.A. is as follows:

H.S.A. (Natural Science)	- 50%
Direct recruits	- 30%
Inter district transfer	- 10%
Promotion of Primary teachers	- 10%
Promotion of Clerks/Typists	- 10%

By considering the 50% of the total sanctioned strength of 123 post 61 posts have been filled up by direct recruitment quota. 59 direct recruitees were working in service as H.S.A. (Natural Science) at that time. 2 more posts of H.S.A. (Natural Science) were also reported to the Public Service Commission as per the order of this Honourable Court on 09-09-05 in W.P.(C)NO.8288/05. When the question of filling remaining 23 post of H.S.A. (Natural Science) arose, then Deputy Director of Education sought a clarification from the Government asking whether the 50% of the net vacancy can be filled up by direct recruitment through Public Service Commission. The said clarification was sought in the light of the G.O. (MS) NO.120/99/G.Edn. dated 25-05-99. The said clarification was sought under the impression that the

ratio earmarked for different categories is to be applied to the net vacancy and not against the cadre strength. The Government as per Letter No.49753/R1/05 G.Edn. dated 10-02-06 informed that there is no legal bar to report the 50% of net vacancy to the Public Service Commission and also directed that while reporting the vacancy the entire facts may also be reported. A true copy of the Government Letter dated 10-02-06 is produced herewith and same may be marked as Exhibit R2(a). Subsequent to the filing of this affidavit 5 more vacancies arose by way of relieve of one H.S.A. (Natural Science) on her appointment in an aided college and 2 vacancies due to promotion of H.S.A. as higher secondary school teachers. 2 more vacancies was also arose due to the additional creation of post H.S.A. (Natural Science). Therefore the total available net vacancy arose to 28. As the Government intimated that there is no legal bar to report the 50% of the net vacancy to the Public Service Commission, the then Deputy Director of Education decided to report the said vacancy to the Public Service Commission. As such the 28 vacancies of H.S.A. (Natural Science) was directed to be filled up as follows;

Through P.S.C.	- 50%	14
Through Inter District Transfer	- 30%	8
Through by transfer recruitments	- 10%	3
Through P.D. Promotion	- 10%	3

As there were no candidates for the vacancies ear marked for by transfer appointment, 3 vacancies set apart fro by transfer appointment was also directed to be filled up by direct recruitment. There was no candidate for one vacancy out of 8 vacancy which set apart fro inter district transfer. Apart from that due to the recalling of protected teachers from parent school 4 more vacancies were also arose and the said vacancies also directed to be filled up by Public Service Commission. Therefore the total number of vacancies H.S.A. (Natural Science) reported to the Public Service Commission arose to 22. The said think was happened due to the non-availability of candidates in other categories.

In fact the percentage/ratio should have been applied against the cadre strength. But in the instant case the ratio was applied against the net vacancy. As already stated due to the creation of additional post the sanctioned strength of H.S.A.(Natural Science) in 2005

arose to 125. Therefore as per the prescribed quota direct recruitees are entitled for 63 posts. In fact 61 direct recruitees were working in the service as H.S.A. (Natural Science) in Kollam District during 2005-06. Therefore the quota fixed for direct recruitment will be completely exhausted by filling 2 more vacancy of H.S.A. by direct recruitment. But in the instant case the ratio was applied against the net vacancy as shown in Ext.R2(a) Government order. Since the ratio was applied against the net vacancy whenever vacancy arose during particular academic year, the net vacancy is taken into account and the ratio applicable to the direct recruitment is applied and vacancies reported to the Public Service Commission accordingly. Apart from that due to the non-availability of the candidate in the other categories the post earmarked for recruitment to other categories were also directed to be filled up by Public Service Commission by direct recruitment. If the ratio is applied against the sanctioned strength of the post of H.S.A. (Natural Science) only 2 more vacancy of H.S.A.(Natural Science) can be filled up by direct recruitment at present. But in the absence of suitable candidates in other categories, if no candidate

is appointed by direct recruitment through Public Service Commission, the post of H.S.A. (Natural Science) will have to be kept vacant causing undue hardship to the students."

4. Learned counsel for the petitioner Sri.P.Gopalakrishnan Nair would contend that in the nature of the dispute and the stand taken, it will be more appropriate for the Government to consider and take a decision in the matter. It is pointed out that the list is due to expire on September 2007.

5. In such circumstances, leaving open the contentions of the petitioner, I feel that a decision should be taken by the Government in the matter. Accordingly, the writ petition is disposed of as follows:

If the petitioner files a representation before the first respondent (Secretary to Government, General Education Department) within a period of two weeks from the date of receipt of a copy of this judgment, first respondent will consider and take a decision in the matter in accordance with law within a period of

six weeks from the date of receipt of a copy of this judgment. I leave open the contentions of the petitioner.

Writ petition is disposed of as above.

K.M.JOSEPH
JUDGE

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